

ORIGINAL

Before the
DOCKET FILE ~~ORIGINAL~~ FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Amendment of Section 73.202(b)) MB Docket No. 04-300
Table of Allotments) RM - 11022
FM Broadcast Stations) RM - 11105
(Fruita and Hotchkiss, Colorado))

RECEIVED

NOV 15 2004

To: Office of the Secretary
Attn: Assistant Chief, Audio Division
Media Bureau

Federal Communications Commission
Office of Secretary

REPLY COMMENTS

Hotchkiss Communications ("HC"), by its counsel, hereby submits its Reply Comments in the above-captioned proceeding.¹ In its Counterproposal, filed on September 30, 2004, HC requested that the Commission amend the FM Table of Allotments to allot Channel 255C3 at Hotchkiss, Colorado as that community's first local service. HC's proposed use of Channel 255C3 at Hotchkiss is mutually exclusive with the proposal set forth in a *Notice of Proposed Rule Making* to allot Channel 255C3 at Fruita, Colorado as that community's second local service.² However, HC's proposal is preferred over the Fruita proposal under the Commission's allotment priorities, because the provision of a first local service at Hotchkiss (2000 U.S. Census population 968) under Priority 3 is a higher priority than a second local service at Fruita (2000 U.S. Census population 6,478) under Priority 4. *See Revision of FM Assignment Policies and Procedures*, 90 FCC 2d 88 (1982).

On October 11, 2004, the Fruita petitioner filed Reply Comments indicating that there is an equivalent channel that can be allotted to Hotchkiss, which would permit the allotment of Channel 255C3 to Fruita. Specifically, the Fruita petitioner proposed to allot Channel 258C3 to

¹ See *Public Notice*, Report No. 2679 (rel., October 29, 2004).

² See *Notice of Proposed Rule Making*, DA 04-2461 (rel., August 9, 2004).

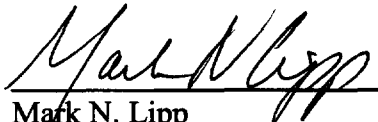
No. of Copies rec'd 014
List ABCDE

Hotchkiss at coordinates 38-46-32 North Latitude, 107-36-15 West Longitude. However, as demonstrated in the attached technical exhibit, at these coordinates, Channel 258C3 would be short spaced to Station KQMT(FM) (Channel 258C), Denver, Colorado, and to the proposed allotment of Channel 257A to Lake City, Colorado. These short spacings did not appear in the channel study provided by the Fruita petitioner. Therefore, Channel 258C3 is not an equivalent channel.³

HC reiterates that if its proposal is granted and Channel 255C3 is allotted to Hotchkiss, its intends to file an application and will construct the facility as authorized.

Respectfully submitted,

HOTCHKISS COMMUNICATIONS

By: 
Mark N. Lipp
Scott Woodworth
Vinson & Elkins, LLP
1455 Pennsylvania Avenue, NW
Suite 600
Washington, DC 20004-1008
(202) 639-6500

Its Counsel

November 15, 2004

³ As indicated in the attached Engineering Statement, in order for Channel 258 C3 to meet the spacing requirements as proposed by the Petitioner, it would be necessary to request that Station KQMT be ordered to downgrade to Class C0. However, the Commission does not permit a Class C0 trigger at this stage in the proceeding. See Streamlining of Radio Technical Rules in Parts 73 and 74 of the Commission's Rules, 15 FCC Rcd 21649, 21656 (2000).

**Engineering Statement
In Support of a
Counterproposal**

**MB Docket 04-300, RM 11022
Hotchkiss Communications**

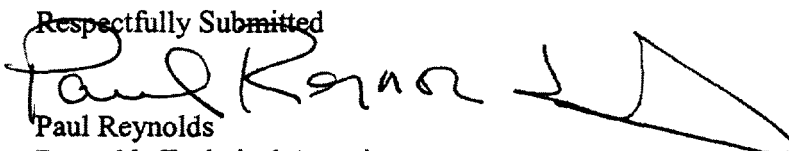
A channel spacing study was conducted for channel 258C3 at Hotchkiss, CO using the reference coordinates of the petitioner, Dana J Puolopo. The study depicts two prohibited short spacings and gives no indication of the methods proposed by the petitioner to eliminate these errors. See Exhibit E, Figure 1.

There is an obvious short space to KQMT Ch 258C3 of 6.72 kilometers and 2.43 kilometers to the proposed add of channel 257A at Lake City, CO. Apparently The Petitioner plans to 'trigger' KQMT to a class C0 in the instant proposed substitution; however, there is no mention of this process in the engineering statement. According to Commission precedent, a 'trigger' reference cannot be used in a petition for rule making at any point other than the initial PRM filing.

If The Petitioner proposed to use a 'trigger' for KQMT, it would not explain how he proposed to eliminate the short spacing to the pending PRM to allot channel 257A at Lake City. It may be possible to modify the reference of channel 257A at Lake City 2.43 kilometers which would eliminate the short spacing, but this process is not allowed in the reply stage since it brings in new communities and channels after the initial comment period.

Based on the only methods that could be used to correct The Petitioner's obvious short spacing of channel 258C3 at Hotchkiss, channel 258C3 is not a viable option since it involves processes not allowed, by Commission allotment rules, at the reply stage.

Respectfully Submitted

A handwritten signature in black ink, appearing to read "Paul Reynolds", followed by a large, stylized flourish or checkmark-like stroke.

Paul Reynolds
Reynolds Technical Associates
12585 Old Highway 280 East
Yellowleaf Creek Landing
Suite 102
Chelsea, AL 35043

**Engineering Statement
In Support of a
Counterproposal
MB Docket 04-300, RM 11022
Hotchkiss Communications**

ADD 258C3 Hotchkiss in lieu of proposed Ch 255C3
(Depicting short spacing to KQMT & PRM 257A Lake City, CO)

REFERENCE		DISPLAY DATES
38 46 32 N	CLASS = C3	DATA 11-05-04
107 36 15 W	Current Spacings	SEARCH 11-15-04
----- Channel 258 - 99.5 MHz -----		
Call	Channel	Location
		Dist
		Azi
		FCC
		Margin
RADD	ADD	255C3 Hotchkiss
		CO 12.60 172.4 43.0 -30.40
Of Note:		
Allotment of Ch 255C3 proposed		
By Hotchkiss Communications @;		
NL: 38 39 47, WL: 107 35 06		
KQMT	LIC-D 258C	Denver
		CO 230.28 61.8 237.0 -6.72
Of Concern:		
Allotment short space to KQMT		
Using Petitioner's reference coordinates.		
RADD	ADD	257A Lake City
		CO 86.57 163.0 89.0 -2.43
Of Concern:		
Allotment short space to PRM of Ch 267A Lake City		
Using Petitioner's reference coordinates.		
KEKB	LIC	260C Fruita
		CO 104.27 288.4 96.0 8.27
AL257	RSV	257C1 Rangely
		CO 183.36 325.0 144.0 39.36
KPTE	LIC	259C2 Durango
		CO 160.59 186.9 117.0 43.59
KMTS.C	CP	256C3 Glenwood Springs
		CO 87.04 15.0 43.0 44.04
KMTS	LIC	256C3 Glenwood Springs
		CO 87.07 15.0 43.0 44.07

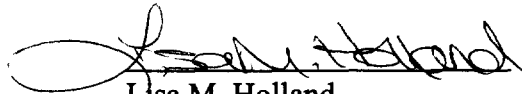
Exhibit E, Figure 1

CERTIFICATE OF SERVICE

I, Lisa M. Holland, a secretary in the law firm of Vinson & Elkins, do hereby certify that on this 15th day of November, 2004, I caused copies of the foregoing "**Reply Comments**" to be mailed, first class postage prepaid, or hand delivered, addressed to the following persons:

* Rolanda F. Smith
Media Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Dana J. Puopolo
2134 Oak Street, Unit C
Santa Monica, CA 90405


Lisa M. Holland

* Hand-delivered